

Appl. No. 10/804,381  
Atty. Docket No. 7892C  
Amdt. dated September 20, 2006  
Reply to Office Action of April 19, 2006  
Customer No. 27752

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### **REMARKS**

#### **Claim Status**

Claims 1-20 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 14, and 17 have been amended to correct a typographical error. Support for his amendment can be found at page 14, line 7.

Claim 3 was amended to obviate the Examiner's objection. Support for the amendment can be found in originally filed Claim 3, with the change only correcting the incorrect dependent relationship.

Claims 10 and 20 are cancelled.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### **Rejection Under 35 USC §112, Second Paragraph**

The Office Action States that Claims 1-20 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 14, and 17 have been amended to correct the typographical error and change the number "15" to "50". Support for this amendment can be found at page 14, line 7.

Accordingly, Applicants respectfully request the 35 USC §112 rejection be withdrawn.

#### **Claim Objections Under 37 CFR 1.75(c)**

Claims 3, 4, 10 and 20 have been objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim.

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Claim 3 has been amended to remedy the basis for objection. The amendment to Claim 3 also remedies the basis for objection to Claim 4. Claims 10 and 20 have been cancelled.

Accordingly, Applicants respectfully request the 37 CFR 1.75(c) rejection be withdrawn.

**Rejection Under 35 USC §103(a) Over Roe (U.S. 5,643,588) in view of Johansson et al. (US 6,562,802)**

Claims 1-20 have been rejected under 35 USC §103(a) as being unpatentable over Roe (U.S. 5,643,588) in view of Johansson et al. (US 6,562,802).

Applicants agree Roe fails to teach the claimed chitosan. Furthermore, Roe fails to disclose the desirability of chitosan.

Applicants cannot find in Johansson any teaching of a paraffin wax. Furthermore, Johansson fails to disclose the desirability of paraffin wax.

Applicants submit that Johansson fails to teach chitosan as a skin care active. The chitosan of Johansson is taught as a skin "protector" (i.e., potentially as a barrier protectant?).

**Claims 1-9 and 11-13:**

MPEP §2143.01 provides: "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." (References omitted).

Further, the CAFC has made clear: "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination." In re Geiger, 815 F.2d at 688, 2 USPQ2d at 1278.

Applicants submit that there is no nexus between Roe and Johansson that would link the two disparate disclosures in any way that would prompt the skilled person to attempt to combine any of their vastly different disclosures.

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Specifically, the Office Action has revealed nothing in Roe that would prompt the skilled person to consider the desirability of chitosan as a skin care active ingredient of the lotion for baby diapers. Even if one were to consider the use of chitosan in a lotion of Roe, Applicants submit that the Office Action fails to indicate where Johansson discloses chitosan as a skin care active ingredient. There can be no possible motivation to combine when the combination is not suggested as being beneficial in any way. Certainly Johansson discloses nothing about the desirability of the combination.

The only attempt at a basis for rejection in the Office Action is the conclusory statement that "it would have been obvious for one of ordinary skill in the art ... to add chitosan and anti-allergens such as EDTA of Johansson to the lotion composition applied to a diaper (of Roe) because Johansson suggests that chitosan has superior features to make it a skin or mucus membrane protector ..."

However, the Office Action has revealed nothing in Johansson that would prompt the skilled person to modify the medical composition of Johansson to choose one ingredient out of many to be combined with the components of Roe, directed to baby diapers. There is simply no disclosure in Johansson, for example, that would prompt the skilled person to selectively choose one of multiple ingredients of Johansson to be combined with a composition having paraffin wax. Johansson discloses at column 8, lines 3-15 at least seven different compounds, some of which have sub-compounds, making a list of at least seventeen (17) different ingredients from which the skilled person could choose as an antiallergenic compound. There is nothing to particularly recommend chitosan to the skilled person as having any skin care active attributes such that it alone should be singled out to be combined with the lotion of Roe (which was not cited as being directed to antiallergenic compounds).

Moreover, the Office Action fails to indicate any basis for believing that a combination of ingredients including chitosan and paraffin wax is even possible, much less desirable. Johansson is directed to medical compositions for many uses, but specific attention is paid to methods for "treating nickel dermatitis". (Column 1, lines 18-20 and 66). Further, Johansson states explicitly "the focus is on the severe condition of hand eczema" with related focus on the "stomach caused by nickel containing jeans buttons or on ear lobes caused by contact with earrings". Clearly, none of these concerns would be particularly relevant to one knowledgeable in the field of baby diapers, and there is nothing that might catch the attention of a skilled person informed of Roe, directed to baby diapers.

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Accordingly, Applicants respectfully submit that the Office Action has impermissibly relied upon hindsight to pick and choose ingredients from two disparate and unconnected references, neither of which have a nexus with the other. Such picking and choosing may result in each of the claim limitations being identified, but a prima facie case of obviousness requires that there be some motivation to combine references. Applicants respectfully request the withdrawal of the 35 USC §103 rejection of Claim 1 and its dependent claims 2-9 and 11-13.

**Claims 14-16:**

In addition to the reasons provided above with respect to the claimed release composition, Claim 14 recites an article comprising a dispensing means.

The Office Action fails to indicate why one skilled in the art knowledgeable about the particular dispensing means disclosed in Roe would have any motivation to modify the lotion of Roe based on Johansson which appears to disclose no dispensing means at all.

Accordingly, Applicants respectfully submit that the Office Action fails to establish a prima facie case of obviousness in accordance with MPEP 2143 for Claims 14-16, and request the rejection be withdrawn.

**Claims 17-19:**

In addition to the reasons provided above with respect to the claimed release composition, Claim 17 recites a method comprising “applying” by a dispensing means and “exposing to moisture”.

The Office Action fails to indicate why one skilled in the art knowledgeable about the particular dispensing means disclosed in Roe would have any motivation to modify the lotion of Roe based on Johansson which appears to disclose no dispensing means at all.

Further, the Office Action fails to disclose where in either reference is found the method step of “exposing to moisture” to release one or more skin care active ingredients from a release composition, as claimed in Claim 17.

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Accordingly, Applicants respectfully submit that the Office Action fails to establish a prima facie case of obviousness in accordance with MPEP 2143 for Claims 17-19, and request the rejection be withdrawn.

#### Double Patenting

Applicants submit that they will timely file any necessary terminal disclaimers upon the indication of allowable subject matter.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-9, and 11-19 is respectfully requested.

Respectfully submitted,

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